

Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Emery Air Freight Corporation and CFE Air Cargo, Inc. Case 20-CD-588

June 30, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Emery Air Freight Corporation, herein called Emery or the Employer, alleging that Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 85 or the Union, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to unrepresented employees employed by CFE Air Cargo, Inc., herein called CFE.

Pursuant to notice, a hearing was held before Hearing Officer Kay M. Hendren on February 11, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and the Union filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, Emery, a Delaware corporation, is engaged in the business of air freight forwarding for commercial businesses with places of business, *inter alia*, in and near San Francisco International Airport in San Francisco, California. Emery annually derives gross revenues in excess of \$50,000 from the transportation of freight from the State of California to points outside the State of California.

We also find that CFE is a Delaware corporation engaged in the business of loading and unloading freight onto and off aircraft under contract with businesses and the United States Government.

Its principal place of business is located in Norfolk, Virginia. During the past fiscal year, CFE has provided services outside the Commonwealth of Virginia valued in excess of \$50,000.

Accordingly, we find that Emery and CFE are employers within the meaning of Section 2(2) of the Act, and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

Emery is in the business of transporting cargo and express packages by air and truck worldwide. The instant dispute involves Emery's delivery of containers of freight from Emery's trucks to airplanes, and airplanes to trucks, at San Francisco International Airport.

Prior to November 30, 1981,¹ Emery employed International Air Service Corporation (IASCO) to deliver its freight weighing less than 70 pounds. Emery's drivers, who are represented by Local 85, drove the trucks directly to Emery's ramp facilities at the airport, and handed the packages to IASCO employees, who loaded them onto Lear jets for delivery. Emery used large commercial airlines to deliver freight weighing more than 70 pounds. The drivers rolled the container off the truck directly onto the airlines' roller systems, where it was handled by airline employees.

Emery officials determined that it would be more efficient to transport its small packages in larger containers by airplanes devoted exclusively to the Company's use. To this end, Emery terminated its arrangement with IASCO and contracted with Interstate Airlines to provide this service. The new system was implemented on November 30. On that date, Emery, pursuant to a contract with CFE, also instituted a new system of transporting cargo between trucks and airplanes. Under this system, a container is unloaded from a truck by use of a rollerized caster system designed by CFE. The Emery driver activates this system by pulling a pin which secures the container. By force of gravity the container slides from the truck onto a "transfer plat-

¹ All dates herein are in 1981 unless otherwise indicated.

form." A 10-ton forklift attaches to the transfer platform and carries the container to a staging area, where it is prepared to be loaded at a later time by CFE employees. The process operates in reverse in moving the packages from the plane to the truck.²

Emery had notified Local 85 of its anticipated change in operations on September 30, 1981. At a meeting with Emery officials on October 15, 1981, Local 85 Business Agent James Baker claimed the work in dispute on behalf of its members.³

From December 1 through December 3, approximately 12 members of Local 85 picketed at the airport, carrying signs stating that CFE violated area standards. The picketing blocked access of Emery's trucks to the terminal and significantly disrupted the Company's operations. The picketing ceased when Emery filed the instant charge.

B. *The Work in Dispute*

The work in dispute relates to the loading and unloading of freight onto and off Emery Air Freight Corporation's delivery trucks at San Francisco International Airport, South San Francisco, California, in the manner discussed above.

C. *The Contentions of the Parties*

Local 85 contends that its collective-bargaining agreement with Emery requires that its members be awarded the work. The Union further contends that this issue is covered by a grievance-arbitration provision in the contract. According to Local 85, this provision provides a method for voluntary adjustment of the dispute and, therefore, the statute is not applicable to this dispute.

Emery and CFE contend that Emery's contract with Local 85 does not apply to the work in dispute. They assert that the work should be awarded to CFE employees based on economy and efficiency of operations, the Employer's practice and preference, the collective-bargaining agreement, and the absence of job loss to employees represented by Local 85.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

² The transfer platform was also invented by CFE.

³ Emery Service Manager Paul Klepac testified that two members of Local 85 told him, thereafter, that the matter could be settled if Emery agreed to hire three additional Local 85 employees. The record does not indicate whether this offer was authorized by Local 85 officials.

At the October 15 meeting with Emery officials, Business Agent Baker claimed the work in dispute for members of the Union. For 3 days after CFE began performing the work in dispute, members of Local 85 picketed at the airport carrying signs stating that CFE violated area standards. The picketing significantly disrupted the Company's operations.

Local 85 does not now contend that it seeks the payment of area standards wages to CFE employees. In fact, there is no evidence that Local 85 ever attempted to ascertain whether the wages of CFE employees met area standards. Moreover, the wording of the sign is belied by the Union's claim for the work.

Rather, considering Baker's claim for the work in dispute, it is clear that Local 85's activities were directed at securing this work for its members. In view of the Union's claim for the work and its picketing activities in support of this claim, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

With respect to Local 85's contention that the contractual grievance-arbitration procedure is a voluntary method of dispute resolution which renders the statute inapplicable, we note that CFE is not a party to the collective-bargaining agreement between Emery and Local 85. Therefore, CFE is not bound by the grievance procedure. Since there is no agreed-upon method for the voluntary adjustment of the dispute to which *all parties* are bound, we find that the dispute is properly before the Board for a determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to relevant factors.⁴ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁵

The following factors are relevant in making the determination of the dispute before us:

1. *Certifications and collective-bargaining agreements*

There are no orders or certifications of the Board awarding jurisdiction of the work in dispute

⁴ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961).

⁵ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

to members of Local 85 or any other labor organization.

Article 47, section 1, of the collective-bargaining agreement between Local 85 and Emery provides, in relevant part:

Except as provided in this Article, only persons working under the jurisdiction of this supplemental Agreement shall: (a) Drive, load and unload trucks, trailers, vans, or any other type of equipment used in connection with trucks. This also means the movement of any type of freight across the dock at the terminal. (b) Operate power equipment used in connection with loading and unloading. (c) Pile freight on pallets, sheds, or boards.

Local 85 contends that the 10-ton forklifts constitute "power equipment used in connection with loading and unloading," within the meaning of section 1(b). The Union asserts that its members regularly operate forklifts to unload trucks at other locations and the use of CFE's transfer platform system does not remove the work in dispute from the effect of this provision.

Emery and CFE, in contrast, urge that this provision does not apply to the work in dispute, asserting that the task of unloading is complete once the container leaves the "lip" of the truck and rests on the transfer platform. Thus, they contend that the driver unloads the truck by releasing the pin which secures the container, and the transfer platform system is used, not to load or unload, but to transport the cargo between the plane and the truck.

We find the interpretations of section 1(b) advanced by both sides to be plausible. Although this provision provides a legitimate basis for Local 85 to claim the work, we find that it does not clearly require that the work be awarded to its members.

Local 85 also urges that article 47, section 1(c), applies, contending that the transfer platform is, in essence, a pallet. We disagree, as the record indicates that the transfer platform is a unique piece of equipment that differs substantially from traditional pallets.

Accordingly, we find that the collective-bargaining agreement does not clearly favor an award to either party.

2. Relative skills

The record reveals that Local 85 represents only two employees who have any experience operating 10-ton forklifts. The other Local 85 members are qualified to operate 3,000- to 5,000-pound forklifts. There is no indication that any of these employees have the skills and training necessary to operate the transfer platform system used herein.

In contrast, employees of CFE participate in training programs to ensure that they are capable of properly handling the equipment. Considering that CFE employees are more likely to be familiar with the specific equipment used to perform the work in dispute, we find that the factor of relative skills favors an award of the work to them.

3. Economy and efficiency of operations

Emery's contract with CFE requires CFE to provide the equipment necessary to perform the work in dispute, including expensive forklifts and transfer platforms. CFE is paid based on the fact that employees work only approximately 1-1/2 hours a day for Emery, and its employees are responsible for loading and unloading the airplanes, as well as the trucks. In addition, CFE maintains substantial insurance, which is necessary for the handling of air cargo.

Thus, an award to Local 85 would require significant additional expenses for the Employer. Emery would need to acquire equipment and insurance, and to employ and train personnel to operate the equipment and load the airplanes. Emery official Klepacz indicated that it would be more economical and efficient for the Company if the work is awarded to CFE.

Accordingly, we find that the factor of economy and efficiency of operations favors an award to the employees of CFE.

4. Job impact

Local 85 members did not operate a forklift transfer platform system prior to November 30, 1981, but merely delivered cargo to IASCO or large commercial airlines directly at the docks. There is no indication that the new system will result in any job loss for Local 85 members. In fact, as of the date of the hearing, Emery had hired an additional employee to deliver packages to and from this terminal. The record does not indicate whether an award to employees represented by Local 85 would result in a job loss for employees of CFE.

Accordingly, we find that this factor does not favor an award to either party.

5. Employer practice and preference

The record indicates that Emery employs CFE to perform work similar to the work in dispute in at least 30 locations. CFE regularly uses its own employees and equipment in its performance of this work. The record further indicates that the Employer assigned the work to CFE's employees and is satisfied with this assignment.

The factor of the Employer's practice and preference, therefore, clearly favors an award to the unrepresented employees employed by CFE.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that unrepresented employees employed by CFE are entitled to perform the work in dispute. We reach this conclusion relying on the factors of economy and efficiency of operations, employer practice and preference, and relative skills. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Unrepresented employees employed by CFE Air Cargo, Inc., are entitled to perform the work

of loading and unloading freight onto and off Emery Air Freight Corporation's delivery trucks by use of CFE's rollerized caster and transfer platform systems, and transporting it to and from airplanes, at San Francisco International Airport, South San Francisco, California.

2. Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Emery Air Freight Corporation to assign the disputed work to employees represented by it.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 20, in writing, whether it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.